

Supreme Court, U. S.
FILED

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MICHAEL RODAK, JR., CLERK

No. **77-1451**

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1977

Agnes Young,

Petitioner

v.

Board of Trustees
of the
University of
Toledo,

Petition for a Writ of Certiorari to
the Supreme Court of the
State of Ohio

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Textbook Citations:

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OPINIONS BELOW

This action was tried to a jury (the Court of Common Pleas of Lucas County, Ohio) resulting in a verdict adverse to the Petitioner. No written Opinions were issued at the trial level. The Petitioner appealed the Trial and Verdict to the Court of Appeals, Lucas County, Ohio; that Opinion is unreported, and appears at Appendix A, infra, pp. The Supreme Court of Ohio dismissed the Appeal of the Petitioner, for the reason no substantial constitutional question existed; this was done without Opinion.

JURISDICTION

The Order of Judgment of the Supreme Court of Ohio was entered on January 13, 1978,

without Opinion. This Petition for Certiorari was filed less than ninety (90) days from the date aforesaid. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1257 (3).

QUESTIONS PRESENTED

Petitioner was under contract to teach at the Respondent University. This contract was terminated by the University. This termination took place without any form of prior administrative hearing on the cause of termination. Petitioner filed suit for breach of contract in violation of due process of law. The trial court dismissed Petitioner's due process claim but allowed the case to proceed on the issue of "just cause" for termination. In defense Respondent University placed in evidence: the denial of tenure to Petitioner and the failure of Petitioner to Appeal this decision of non-tenure. The University further offered student petitions alleging incompetence on the part of the Petitioner. Under the circumstances, was Petitioner deprived of rights protected by the:

1. Due Process Clause of the Fourteenth Amendment in that her teaching contract was terminated without a prior administrative hearing on the cause for termination.

2. Due Process Clause of the Fourteenth Amendment in that denial of tenure and failure to appeal that decision were allowed as a defense for a contract already in existence.

3. Due Process Clause of the Fourteenth Amendment in that hearsay evidence of students was allowed to prove "just cause" for termination.

CONSTITUTIONAL PROVISION INVOLVED

Constitution of the United States,
Amendment XIV, Section I:

"... nor shall any State deprive any person of life, liberty, or property without due process of law..."

STATEMENT OF FACTS

In January of 1967 Petitioner was hired by the Respondent University of Toledo in their Community and Technical College, as a mathematics instructor. Thereafter she taught mathematics at the University for the next five and one-half years, until conclusion of the academic year in June of 1972. She was competent in her field and the University at trial so admitted. She received excellent evaluations from her students. In addition to her teaching duties, she had the vision to found and chair the Library Advisory Committee for the Community and Technical College. She was offered a leave of absence with full pay for the Spring Quarter of 1972, but she declined do to her total dedication to teaching and to the University.

Petitioner did have a contract with the University to teach mathematics for the year 1972-1973. This contract came

about by operation of law, in that the University regulations provide that a teacher with four or more years of employment is rehired for the following year, if not notified by December of the previous academic year. Petitioner received no notice of nonrenewal of her contract, and it is agreed Petitioner thus had a teaching contract for the coming year, 1972-1973. On several occasions following December of 1971 the University informed the Petitioner that she did have a contract for the following year, and she would be teaching. She received the last such notice on May 16, 1972 in a letter from Dr. Newton Rochte, Dean of the Community and Technical College. Several weeks later, in early June of 1972, Petitioner was notified by the President of the University of Toledo that she was fired, and her contract for the coming year was terminated. Petitioner reported for teaching with the University the following September but was not permitted to teach. Throughout the year 1972-1973 Petitioner was ready, willing and able to perform her teaching duties. However, the University refused

to honor the contract, and the Petitioner did not receive any of the \$10,500 in compensation, which she was entitled to under this contract.

At the trial the University contended there was just cause for the firing of the Petitioner. But at the close of the evidence the University was forced to admit to the jury it had come forward with very little evidence. In attempting to sustain its burden of proof on the issue of "just cause for firing" the University made the following allegations: First there had been complaints by other Professors concerning the Petitioner, yet the University failed to produce any of the unnamed professors who supposedly complained about the Petitioner. The University further alleged lack of attendance at the Library Advisory Committee meetings by the Petitioner. She testified that in her five and one-half years of teaching she missed a total of three meetings, which was uncontradicted by the Defendant. Furthermore there was

evidence in mitigation in that the Dean of the College himself cancelled meetings, and that other members of the Committee often did not attend, yet their conduct did not necessitate their firing.

Of the hundreds of students taught by the Petitioner, the University was able to produce only one, and her testimony was barren of any evidence justifying the firing of the Plaintiff. This student testified that on two or three occasions she approached the Petitioner at the end of a class period to ask questions. The student testified the Petitioner would remain only briefly following class to answer questions. The student further testified that during class the Petitioner would devote her first fifteen minutes of the period to lecture using the text book, and thereafter would answer questions, and often in answering these questions she would refer to the text book. On these few shreds of testimony, and the denial of tenure and the failure of the Petitioner to Appeal that decision, the University

attempted to establish "just cause" for the firing of the Petitioner.

The Petitioner called William Holmes, a detective with the Toledo Police Department and candidate for his Master's Degree from the University of Toledo. Mr. Holmes had been a student of the Petitioner during the Winter Quarter of her last year of teaching. He testified the Petitioner was most competent in the field of mathematics and was able to relate the subject matter to him as a student. He further testified the following Quarter he took a math course from Dr. Nichols, Chairman of the Department, and the Petitioner's superior. Mr. Holmes indicated there were student complaints concerning Dr. Nichols, yet the University did not find these to be just cause for his termination.

The only remaining evidence tendered by the University were two petitions. These alleged student petitions purporting to claim the Petitioner did not show ability to get student cooperation, and she was not sensitive to student needs. These petitions should not have been considered as evidence, since they were the rankest of hearsay. Despite

objection by the Petitioner, they were submitted to the Jury. Thus, the University did not establish "just cause" for the firing of the Petitioner, and the University left unrebutted her claim that she was fired because of professional jealousy and rivalry.

The Federal questions sought to be reviewed were raised in the following manner. The question of termination of Petitioner's contract in violation of due process of law was raised in the pleadings. Paragraph 2 of the Complaint reads as follows:

" Plaintiff further says since February 1, 1967 through June, 1972, she was a full time teacher at said University under contract with said University, and she was denied and refused a contract for the 1972-1973 academic year by the Defendants, contrary to the rules, regulations, policies and procedures manual, the Statutes of Ohio and the Constitution of the State of Ohio and the United States of America, and in the denial and refusal of said contract the University through its Trustees and Administrative official violated the

principles of due process
as to the Plaintiff."

At Trial the Court dismissed the above "due process claim" of the Petitioner (transcript page 274). However the case did proceed as to the remaining issue of "just cause" for termination; and a verdict was returned in favor of the Respondent University.

The question of the placing in evidence of Petitioner's denial of tenure and failure to appeal was objected to at trial on four separate occasions; the objection was overruled each time (transcript page 87, 171, 174, 176). Objection was made to the introduction of the 15 exhibits offered by the University as to denial of tenure and failure to appeal. Objections to each of the exhibits and the Court's overruling of these objections appears in the transcript at pages 253 through 261. The last question as to the introduction of student petitions as proof of Petitioner's inadequate teaching ability was objected to on five occasions during the trial, the Court overruling the objection each

time (transcript pages 161, 163, 253, 254, 259).

An appeal of the trial was taken to the Sixth Judicial District of Ohio and each of the above three questions was raised by a separate assignment of error. The Sixth Judicial District overruled each of these assignments of error. (Unreported decision Young -vs- Board of Trustees of University of Toledo, et al, Court of Appeals No. L 76 303).

Appeal was then taken to the Supreme Court of Ohio, wherein Petitioner filed a Memorandum in Support of Jurisdiction and raised each of these questions. On January 13, 1978 the Supreme Court of Ohio, without Opinion, dismissed the Appeal "for the reason no substantial constitutional question existed." Petitioner now seeks review of these questions in this present Petition for Writ of Certiorari.

REASONS FOR GRANTING THE WRIT

1. The decision below directly conflicts with the due process principles enunciated in this Court's ruling in

Board of Regents v. Roth.

In Board of Regents v. Roth, 408 U.S. 564, this Court held that the due process requirements of the Fourteenth Amendment mandated that prior to a teacher's termination of a contract, the teacher must first be given a statement of the reasons and a hearing. In emphasizing the importance of the hearing being prior to the termination of the contract the Court cited the following quotation from Bell v. Burson, 402 U.S. 535.

" While' many controversies have raged about ... the due process clause,' ... it is fundamental that due process requires that when a State seeks to terminate (a protected) interest ..., it must afford' notice and opportunity for hearing appropriate to the nature of the case' before the termination becomes effective." Emphasis that of the Supreme Court, 408 U.S. at 570.

In a concurring opinion to the Roth case Chief Justice Burger made it clear that the Court's decision requires the

hearing on the cause for termination be held before the contract is revoked:

" I concur in the Court's Judgments and Opinions in Perry and Roth, but there is one central point in both decisions that I would like to underscore since it may have been obscured in the comprehensive discussion of the cases..." "The Court holds today only that a state-employed teacher who has a right to re-employment under State Law, arising from either an express or implied contract, has, in turn, a right guaranteed by the Fourteenth Amendment to some form of prior administrative or academic hearing on the cause for non-renewal of his contract." 408 U.S. at 603.

In the present action Petitioner did have a contract to teach for the academic year 1972-1973. The existence of this contract was acknowledged by University Officials on several occasions, including a notice to her on May 16, 1972 from the Dean of the College. However several weeks later in early June of 1972, Petitioner was notified by the President of the University that she was fired, and

her contract for the coming year was terminated. Prior to receiving this notice of termination, she received no reasons for her termination or a hearing to review the causes for her termination. The State Court below has ignored the clear ruling of this Court requiring the teaching contract to be honored, where the State has failed to grant to the teacher a hearing prior to the termination of the contract.

REASONS FOR GRANTING THE WRIT

2. By allowing evidence of denial of tenure and failure to appeal as a defense to termination of a contract, the Court below is undermining the due process requirement of Roth that there be a hearing prior to termination.

At trial the Respondent University introduced evidence that the Petitioner had been denied tenure and that Petitioner had failed to appeal this decision. This was irrelevant since it was undisputed Petitioner had a valid teaching contract for the coming year; it was not conditioned upon her being granted tenure.

Where a party, as the Petitioner in this action, has a valid teaching contract with the University, a belated notice of termination of the contract, without a prior hearing as to the reasons, relieves the party of any duty to respond to such notice and of any duty to utilize the administrative review procedures provided by the University. Where there is a repudiation of a contract, the non-breaching party has the option of treating the contract as terminated and to sue immediately or to treat the repudiation as inoperative and await the date for performance before recognizing the breach and upon the date for performance to offer herself as ready, willing and able to perform. 17 Am. J 2d 910, 912, Contracts, Sections 448-449; 11 Ohio Jurisprudence 2d. 532, Contracts, Sections 270-271. The University is precluded from setting up any defense on Petitioner's Claim arising out of the rules and regulations by reason of the fact the University did not follow such rules and is estopped

to assert any claimed failure of Plaintiff to follow such rules and regulations pertaining to the administrative review of the termination of the contract. 20 Ohio Jurisprudence 2d 511, 582, Estoppel and Waiver, Secs. 45 and 90. This Court has held that what is of significance is whether the teacher had a contract, not the questions of whether the teacher was tenured. Perry v. Sinderman, 408 U.S. 493; Regents v. Roth, 408 U.S. 564. If the teacher is under contract, due process requires the contract not be terminated, without a prior hearing as to the reasons for revocation.

REASONS FOR GRANTING THE WRIT

3. The decision below denies to the Petitioner due process of law in that "cause for termination" is allowed to be proved by hearsay evidence.

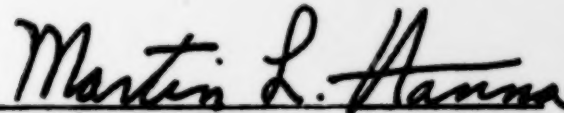
In attempting to sustain it's burden of proving reasonable grounds for the termination of Petitioner's Contract, the Respondent University resorted to introduction of

alleged Petitions from students claiming she lacked teaching ability. Except for one, the University failed to produce any of the students to testify in Court as to the Petitioner's lack of ability. In the same manner the University introduced documents from the tenure committee claiming poor performance on the part of the Petitioner. However the University failed to produce any of the professors making those statements. Petitioner was denied the opportunity to cross examine her accusers, a fundamental principle of due process. As has been previously discussed, the remaining major portion of the University's defense was the denial of tenure, which is irrelevant for a teacher under contract. Therefore petitioner was denied due process of law in that her teaching contract was terminated without a prior hearing and without sufficient proof of "just cause for termination."

CONCLUSION

For these reasons, a Writ of Certiorari should issue to review the judgment of the Supreme Court of Ohio.

Respectfully submitted,



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April 7, 1978

APPENDIX A

PARTS OF THE RECORD CONTAINED HEREIN:

- (1) Opinion of Sixth Judicial District of Ohio Affirming the verdict and judgment of the Court of Common Pleas of Lucas County, Ohio
- (2) Judgment Entry of the Supreme Court of Ohio dismissing Petitioner's Appeal due to absence of substantial constitutional question.

- (1) Opinion of Sixth Judicial District
of Ohio Affirming the verdict and
Judgment of the Court of Common
Pleas of Lucas County, Ohio

COURT OF APPEALS OF OHIO,
SIXTH DISTRICT

COUNTY OF LUCAS

C.A. NO. L-76-303

Agnes S. Young APPEAL FROM
Appellant LUCAS COUNTY COMMON
 PLEAS COURT

-VS-

Board of Trustees
of University
of Toledo, et al.

Appellees.

DECISION
&
JOURNAL ENTRY

Date: September 23, 1977

This cause came on to be heard upon
the record in the trial court. Each as-
signment of error was reviewed by the
Court and upon review the following
disposition made:

This is an appeal from a jury ver-
dict and judgment adverse to plaintiff,

and from the denial of Plaintiff's
motions for new trial and judgment
n.o.v., entered in Common Pleas Court,
Lucas County, Ohio.

Plaintiff, Agnes Young, was a
faculty member at the University of
Toledo from 1967 to 1972. In May 1972,
Plaintiff was promised a teaching con-
tract for the 1972-1973 academic year,
but was subsequently informed (in June)
that her employment would be terminated
at the end of the 1971-1972 term. The
steady deterioration of her teaching
performance was alleged as the primary
reason for this decision. When the
University failed to give Plaintiff a
teaching assignment for 1972-1973 and
failed to pay her a salary for that
academic year, she brought an action
in Common Pleas Court, Lucas County,
Ohio.

In January 1974, Defendant filed
a motion for summary judgment. The

Common Pleas Court's granting of that motion was reversed by this Court in August, 1974. Pursuant to that reversal, Plaintiff's case was tried before a jury with a verdict favorable to defendant. Plaintiff then filed a motion for a new trial and a motion for judgment n.o.v. From the denial of those motions and from the adverse jury verdict, plaintiff now appeals.

Plaintiff presents six assignments of error. Assignment of error No. 1 is presented as follows:

"THE COURT COMMITTED PREJUDICIAL ERROR IN REFUSING TO INFORM THE JURY OF THE STIPULATION AND ADMISSION BY THE APPELLEES, THAT THE APPELLANT DID HAVE A TEACHING CONTRACT WITH THE UNIVERSITY OF TOLEDO FOR THE ACADEMIC YEAR 1972-1973."

An examination of the record indicates that the existence of a contract between plaintiff and defendant University was mentioned, in the presence of the jury, on several occasions. Further,

the stipulation in question was clearly announced at trial and in the judge's jury charge.

Thus, we find that the trial court did not commit prejudicial error in refusing to allow the stipulation in question to be repeated. Assignment of error No. 1 is now well taken.

Assignment of error No. 2 is presented as follows:

"PREJUDICIAL ERROR OCCURRED IN A NUMBER OF THE COURT'S RULINGS AS TO THE ADMISSION OF EVIDENCE."

Concerning exhibits K and L, a review of the record indicates the proper authentication was established at trial. The Court did not error in admitting them.

Concerning exhibit AA, plaintiff's objection to its admissibility was withdrawn and, therefore, waived.

Concerning exhibits R, T, and V, timely objections as to their admissibility were not raised in the lower court and cannot be raised at this time.

Concerning exhibit M, an objection as to the nature of its content was not raised in the lower court, and cannot be raised at this time. Further, the court did not err in its ruling as to the self-serving nature of this exhibit.

Exhibits I, N, O, P, Q, S, U, W, and DD were objected to on the basis of a 1974 Opinion by this Court. However, the holding therein did not preclude the admissibility of these exhibits for the purpose for which they were offered.

Concerning exhibit CC, the court did not sustain plaintiff's objection to its admissibility. The statement of the court, quoted on page 12-13 of plaintiff's brief, referred to exhibit BB, not Exhibit CC. Exhibit BB was not admitted.

Concerning exhibit EE, the lower court did not err in finding this exhibit was not self-serving.

Concerning the objection to the Courts ruling on plaintiff's questions to several witnesses, the court did not find err in sustaining defendant's objections to the plaintiff's questions.

Concerning the objection to the trial court's instruction to plaintiff, the court did not err in instructing plaintiff to reply responsively to the questions posed by defendant.

A review of the record leads to conclude that the trial court did not err in its determinations as to those evidentiary rulings specifically objected to by plaintiff. Assignment of error No. 2 is not well taken.

Assignment of error No. 3 is presented as follows:

"THE COURT'S INSTRUCTIONS TO THE JURY CONTAINED ERRORS PREJUDICIAL TO THE APPELLANT."

The jury instructions requested by plaintiff prior to final argument were framed thusly:

"1. Request that the Court charge in accordance with the headnote decision in the Court of Appeals Opinion dated August 16, 1974. (C.A. No. 7629)

"2. Plaintiff requests that the Court charge that all procedural matters of appeal proceedings pertaining to this case after October 1, 1971 are not available to the Defendant University of Toledo as a defense in this cause."

The issue before the jury in the case sub judice was whether defendant University of Toledo terminated plaintiff's contract for "just cause." The headnotes referred to in the above-quoted request addressed a different issue and could have caused the jury to be misled as to the issue before it. Further, the proposed instruction was presented to the court in an incomplete form. Specific instructions, rather than general suggestions, should have been framed.

We note that in its closing argument, defendant made mention of the University's appeal procedures and plaintiff's failure to utilize them. Plaintiff, however, failed to object to those remarks in timely fashion.

Having reviewed the record, we hold that, given the context of the entire jury instruction, plaintiff was not prejudiced by the lower court's failure to give the instruction requested. The lower court did not err.

Assignment of error No. 3 is not well taken.

Assignment of error Nos. 4 and 5 are presented as follows:

"THE VERDICT IN THIS ACTION IS UNSUPPORTED BY THE EVIDENCE.

"THE VERDICT IN THIS ACTION IS CONTRARY TO THE WEIGHT OF THE EVIDENCE."

It is an elementary principle of teacher contracts that such contracts may be terminated for just cause and that dismissal procedures to accomplish such purpose may be utilized by the school authorities employing the teachers. Just cause

for termination of the teacher's contract justifying her dismissal includes her inefficiency, neglect or incompetency constituting a lack of some requisite ability. Applebaum v. Wulff, 58 Law abs. 260; 68 Am. Jur 2d. 495, Schools, Sec. 162, 4 ALR 3d. 1090, 1095, Sec. 3 (a). A teacher not qualified or capable of performing the teaching duties which she undertakes may lawfully be discharged before the expiration of her term of employment. School District v. McCoy (Kan.) 1 P. 97; Keedy v. Long (Md.) 18 A. 704.

The trial court in the case sub judice properly instructed the jury on the foregoing legal propositions authorizing the defendant University to terminate, for just cause, the 1972-1973 teacher contract of Plaintiff. The evidence supported the jury verdict for the defendant, based on dismissal of a teacher for just cause.

We find that the verdict of the jury in the case sub judice was supported by the weight of the evidence.

Assignments of error Nos. 4 and 5 are not well taken.

Assignment of error no. 6 presented as follows:

"IT WAS ERROR FOR THE COURT NOT TO GRANT APPELLANT'S MOTION FOR NEW TRIAL, OR JUDGMENT NOTWITHSTANDING THE VERDICT."

The U.S. Supreme Court stated, in Morrissey v. Brewer (1972), 408 U.S. 471, 481:

"Due Process is flexible and calls for such procedural protections as the particular situation demands."

And in Armstrong v. Manzo (1965), 380 U.S. 54, the court held that a basic requirement of due process was the opportunity to be heard,

"* * * at a meaningful time and in a meaningful manner." (at 552) See Mathews v. Eldridge (1976), 424 U.S. 319.

Plaintiff herein was given specific reasons for her termination. She was afforded ample opportunity to appeal that termination before it became final, and was furnished adequate procedures through which to advance her appeal. She decided to ignore these.

Further, plaintiff recieved full compensation for the academic year 1971-1972, her last at the University.

We find that Defendant did not violate plaintiff's "due process" rights, since timely notice and the opportunity for a meaningful hearing were provided. Assignment of error No. 6 is not well taken.

On consideration whereof, the court finds substantial justice has been done the party complaining, and judgment of the Common Pleas Court of Lucas County is affirmed.

This cause is remanded to said Court for Execution of judgment and for costs.

Costs assessed against Plaintiff-Appellant.

John W. Potter, P.J.

Clifford F. Brown, J.

John J. Connors, Jr.,
concur.

- (2) Judgment Entry of the Supreme Court of Ohio dismissing the Petitioner's Appeal due to Absence of substantial constitutional question.

THE SUPREME COURT OF OHIO

Agnes S. Young, * 1978 Term
Appellant, * January 13, 1978
-vs- * No. 77-1292
Board of Trustees * APPEAL FROM THE
of University * COURT OF APPEALS
of Toledo, et al., * for Lucas County
Appellees. *

This cause, here on appeal as of right from the Court of Appeals for Lucas County, was heard in the manner prescribed by law, and, no motion to dismiss such appeal having been filed, the Court sua sponte dismisses the appeal for the reason that no substantial constitutional question exists herein.

It is further ordered that a copy of this Entry be certified to the Clerk of the Court of Appeals for Lucas County for entry.

I, Thomas L. Startzman, Clerk of the Supreme Court of Ohio, certify that the foregoing entry was correctly copied from the Journal of this Court.

Witness my hand and
seal of the Court
this ____ day of ____ 19__.

Clerk